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H.B. No. 939

A BILL TO BE ENTITLED

AN ACT

relating to unenforceable restrictive covenants regarding standby electric generators affecting residential homes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 202, Property Code, is amended by adding Section 202.019 to read as follows:

Sec. 202.019. STANDBY ELECTRIC GENERATORS. (a) In this section, "standby electric generator" means a device that converts mechanical energy to electrical energy and is:

(1) powered by natural gas, liquefied petroleum gas, diesel fuel, biodiesel fuel, or hydrogen;

(2) fully enclosed in an integral manufacturer-supplied sound attenuating enclosure;

(3) connected to the main electrical panel of a residence by a manual or automatic transfer switch; and

(4) rated for a generating capacity of not less than seven kilowatts.

(b) Except as provided by this section, a property owners' association may not adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from owning, operating, installing, or maintaining a permanently installed standby electric generator.

(c) A property owners' association may adopt or enforce any

1 of the following dedicatory instrument provisions to regulate the  
2 operation and installation of standby electric generators:

3 (1) a dedicatory instrument provision that requires a  
4 standby electric generator to be installed and maintained in  
5 compliance with:

6 (A) the manufacturer's specifications; and

7 (B) applicable governmental health, safety,  
8 electrical, and building codes;

9 (2) a dedicatory instrument provision that requires  
10 all electrical, plumbing, and fuel line connections to be installed  
11 only by licensed contractors;

12 (3) a dedicatory instrument provision that requires  
13 all electrical connections to be installed in accordance with  
14 applicable governmental health, safety, electrical, and building  
15 codes;

16 (4) a dedicatory instrument provision that requires  
17 all natural gas, diesel fuel, biodiesel fuel, or hydrogen fuel line  
18 connections to be installed in accordance with applicable  
19 governmental health, safety, electrical, and building codes;

20 (5) a dedicatory instrument provision that requires  
21 all liquefied petroleum gas fuel line connections to be installed  
22 in accordance with rules and standards promulgated and adopted by  
23 the Railroad Commission of Texas and other applicable governmental  
24 health, safety, electrical, and building codes;

25 (6) a dedicatory instrument provision that requires  
26 nonintegral standby electric generator fuel tanks to be installed  
27 and maintained to comply with applicable municipal zoning

1 ordinances and governmental health, safety, electrical, and  
2 building codes;

3 (7) a dedicatory instrument provision that requires  
4 the standby electric generator and its electrical lines and fuel  
5 lines to be maintained in good condition;

6 (8) a dedicatory instrument provision that requires  
7 the repair, replacement, or removal of any deteriorated or unsafe  
8 component of a standby electric generator, including electrical or  
9 fuel lines;

10 (9) a dedicatory instrument provision that requires an  
11 owner to screen a standby electric generator if the standby  
12 electric generator is:

13 (A) visible from the street faced by the  
14 dwelling;

15 (B) located in an unfenced side or rear yard of a  
16 residence and is visible either from an adjoining residence or from  
17 adjoining property owned by the property owners' association; or

18 (C) located in a side or rear yard fenced by a  
19 wrought iron or residential aluminum fence and is visible through  
20 the fence either from an adjoining residence or from adjoining  
21 property owned by the property owners' association;

22 (10) a dedicatory instrument provision that sets  
23 reasonable times, consistent with the manufacturer's  
24 recommendations, for the periodic testing of a standby electric  
25 generator;

26 (11) a dedicatory instrument provision that prohibits  
27 the use of a standby electric generator to generate all or

1 substantially all of the electrical power to a residence, except  
2 when utility-generated electrical power to the residence is not  
3 available or is intermittent due to causes other than nonpayment  
4 for utility service to the residence;

5 (12) a dedicatory instrument provision that regulates  
6 the location of the standby electric generator; or

7 (13) a dedicatory instrument provision that prohibits  
8 an owner from locating a standby electric generator on property:

9 (A) owned or maintained by the property owners'  
10 association; or

11 (B) owned in common by the property owners'  
12 association members.

13 (d) A dedicatory instrument provision permitted by  
14 Subsection (c), if adopted, must be reasonably applied and  
15 enforced.

16 (e) A dedicatory instrument provision that regulates the  
17 location of a standby electric generator is unenforceable if:

18 (1) it increases the cost of installing the standby  
19 electric generator by more than 10 percent; or

20 (2) it increases the cost of installing and connecting  
21 the electrical and fuel lines for the standby electric generator by  
22 more than 20 percent.

23 (f) If a dedicatory instrument requires that the  
24 installation of a standby electric generator be approved before  
25 installation, approval may not be withheld if the proposed  
26 installation meets or exceeds the dedicatory instrument provisions  
27 permitted by Subsection (c).

1       (g) If a dedicatory instrument provision requires an owner  
2 to submit an application for approval of improvements located  
3 exterior to a residence, this section does not negate the  
4 requirement, but the information required to be submitted as part  
5 of the application for the installation of a standby electric  
6 generator may not be greater or more detailed than the application  
7 for any other improvement.

8       (h) In a hearing, action, or proceeding to determine whether  
9 a proposed or installed standby electric generator complies with  
10 the requirements of a dedicatory instrument provision permitted by  
11 Subsection (c), the party asserting noncompliance bears the burden  
12 of proof.

13       (i) The installation of a standby electric generator by a  
14 licensed contractor or the acceptance of the installation of a  
15 standby electric generator, or any of its components, by a  
16 political subdivision is conclusive proof that the standby electric  
17 generator and its components were installed in compliance with  
18 Subsection (c).

19       SECTION 2. Section 202.019, Property Code, as added by this  
20 Act, applies to a dedicatory instrument adopted before, on, or  
21 after the effective date of this Act.

22       SECTION 3. This Act takes effect immediately if it receives  
23 a vote of two-thirds of all the members elected to each house, as  
24 provided by Section 39, Article III, Texas Constitution. If this  
25 Act does not receive the vote necessary for immediate effect, this  
26 Act takes effect September 1, 2015.